CF0000061949

Division Bench (Criminal)

समक्ष: माननीय उच्च न्यायालय मध्यप्रदेश जबलपुर खंडपीठ, जबलपुर ।

क्रिमिनल अपील 944 /99

क्रिमिनलअपील अन्तर्गत धारा 374(2) दण्ड प्रक्रिया संहिता

4634
3/4/99
Sri Lalit M. Dubey
Adv.

अपीलार्थीगण:- (1) पदमो उर्फ पदुम चौहान,
आत्मज रामेश्वर चौहान,
आयु 35 वर्ष पेशा कृषि,
निवासी- टांगरघाट, थाना तमनार
जिला-रायगढ़ (मo प्र०)

(2) पदुमन चौहान आ० रामेश्वर चौहान
आयु 30 वर्ष पेशा कृषि निवासी ग्राम
टांगरघाट थाना तमबार जिला रायगढ़ (मo प्र०

विरुद्ध

प्रत्यर्थी:- मध्यप्रदेश शासन

XI-HC-22

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 944/99 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

20-9-2006

Mr. Devesh Chandra Verma, counsel for the appellants.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. U.K.S. Chandel, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 8th February, 1999, passed by the Sessions Judge, Raigarh, in Sessions Trial No.96/98, whereby learned Sessions Judge convicted the accused/appellants for commission of offence under Section 302 read with Section 34 of the I.P.C. and sentenced each of them to undergo imprisonment for life.

The case of the prosecution, in brief, is that in the intervening night of 24th & 25th of March, 1998, after taking dinner Rameshwar went for sleep in the house of Teekam Chauhan, whereas his wife and two sons Padmo @ Padum Chauhan & Paduman Chauhan (the accused/appellants herein) along with daughter & son of Padmo @ Padum Chauhan namely, Sindoormati & Rajesh, respectively were sleeping in the house. In the mid night, when the accused persons started assaulting their mother with Lathis, daughter & son of Padmo @ Padum Chauhan namely, Sindoormati & Rajesh, respectively, started raising screams that Padmo & Paduman are assaulting with Lathis. On hearing the screams, Sukhram, Dhansingh, Teekam Singh, Prahlad etc., came to the place of occurrence where

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they saw that Rambha Bai was lying, there were injuries on her face, blood was oozing out of the injuries and she was already dead.

The matter was reported by Rameshwar (PW-1) in Police Station: Tamnar on which, the Station House Officer of the said Police Station registered the F.I.R. (Ex.P-1) and left for the place of occurrence. After giving notice Ex.P-6 to the Panchas, he prepared the Panchnama (Ex.P-5) of the dead body of Rambha Bai. One Lungi of accused Paduman was taken into possession under Ex.P-2. One Lungi of accused Padmo was taken into possession under Ex.P-3. Sari of Rambha Bai was taken into possession under Ex.P-4. One Lathi was taken into possession from accused Padmo under Ex.P-7. One Lathi was taken into possession from accused Paduman under Ex.P-8. Blood stained soil and plain soil were taken into possession from the place of occurrence under Ex.P-9.

The dead body of Rambha Bai was sent for post-mortem examination to Primary Health Centre, Tamnar, where Dr. B.S. Badhai (PW-7) conducted post-mortem on the body of Rambha Bai and he noticed several injuries on head & face of the deceased. He found that left eyeball was ruptured and lacerated wound of left eye was present in the size of 3 cms. x 2 cms. x 1 cm.. Right eye was partially open and eyeball was ruptured. Mouth was partially open and tongue was beaten between the teeth. There was fracture of mandible and maxillary bone with extraction of tooth. Staining of whole face with clotted blood was present. There was a lacerated wound on the right side of the face just above the right eyebrow measuring 13 cms. x 3 cms. x 1 cm. in diameter. Another lacerated wound was present on the right forehead measuring 3 cms. x 2 cms. x 1 cm. in diameter. Lacerated wound was also present on the left eyebrow and above measuring 3 cms. x 2 cms. x 1 cm., left face 3 cms. x 1 cm. x 1 cm., left

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pre-auricle 4 cms. x 1 cm. x 1 cm. in diameter, respectively. Lacerated wound was also present on the left illiac region measuring 3 cms. x 1 cm. x 1 cm. in diameter. Two lacerated wounds were also present on right tibia measuring 2 cms. x 5 cms. in diameter with fracture of right tibia and fibula lower end. There was an abrasion over left tibia & fibula measuring 2 cms. x 1 cm. in diameter. The doctor opined that cause of death was shock and extensive injuries on vital portion, the head and over face by hard & blunt object.

After completion of investigation, charge sheet was filed against the accused/appellants in the Court of Judicial Magistrate, First Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh, for trial.

The prosecution in order to establish charge against the accused/ appellants, examined eight witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which accused Padmo pleaded innocence and stated that at the time of incident he became mad and he does not know what happened. Similar reply was given by accused Paduman Chauhan also.

Learned Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused persons convicted and sentenced the accused persons as mentioned in para 1 of this judgment.

We have heard Mr. Devesh Chandra Verma, learned counsel for the accused/appellants and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. U.K.S. Chandel, learned Panel Lawyer on behalf of the State/respondent.

As far as the homicidal death of Rambha Bai is concerned, same has not been disputed by learned counsel for the accused/appellants. Apart from that,

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from the post-mortem report (Ex.P-10) and evidence of Dr. B.S. Badhai (PW-7), it is established that the death of Rambha Bai was homicidal in nature.

As far as involvement of the accused/appellants in the commission of crime in question is concerned, Rameshwar (PW-1), who lodged the report and who is father of the accused/appellants, was not present in the house. He has stated in his evidence that on the fateful night he went for sleep in the house of Teekam and even though coming to know about the incident he had not gone to his house and he lodged the report Ex.P-1 at the Police Station. Ram Singh (PW-4), who was the Sarpanch of Village: Taangar Ghat, has stated in his evidence that he went to the place of occurrence, Panchnama was prepared in his presence and Lathis were taken into possession from Padmo & Paduman under Exs.P-7 & P-8. Sindoormati & Rajesh informed that the accused persons have murdered Rambha Bai. Whereas, Rajesh has not been examined by the prosecution and Sindoormati has been examined as PW-6 who has turned hostile and stated in her evidence that she disclosed that Rambha Bai fell down and died. In cross-examination by the Additional Public Prosecutor, she stated that on account of Police fear, she gave statement that the accused persons assaulted the deceased with Lathi. In cross-examination by counsel for the accused persons she has stated that on the advise of her grandfather and on account of fear of Police, she gave the statement. Therefore, she has not supported the prosecution case. As has been mentioned above, she has turned hostile and the other eyewitness has not been examined by the prosecution.

Jagannath Rathiya (PW-5) has stated in his evidence that Rameshwar was not sleeping in his house on the fateful night on account of fear of the accused

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persons. He has further stated that the accused persons became mad and he is not witness to the incident.

Therefore, the prosecution has not been able to produce clinching legal evidence regarding involvement of the accused/appellants in the crime in question, as one witness has not been examined and other witness has turned hostile. Only evidence against the accused persons remains is recovery of Lathis and Lungis, on which as per the F.S.L. report, blood was found. As far as the recovery of Lathis is concerned, same were not recovered at the instance of the accused persons. Clothes were recovered on 26-3-1998 vide Exs.P-2 & P-3. Lathis were recovered on 25-3-1998 vide Exs.P-7 & P-8. But there is no report that the blood present on these Lathis was human blood and that too of the blood group of the deceased, as such, merely on the ground of recovery of Lathis, the accused persons cannot be connected with the crime in question.

In the circumstances, we are of the considered opinion that the prosecution has utterly failed to establish charge against the accused persons. Therefore, the judgment of the trial Court cannot be sustained.

In the result, the appeal succeeds and the same is allowed. Conviction and sentences imposed upon the accused/appellants under Section 302 read with Section 34 of the I.P.C. are set aside and they are acquitted of the said charge. Both the accused/appellants are said to have been in detention since 26-3-1998, thereby, they are in detention since about eight years. It is, therefore, directed that the appellants be released forthwith, if not required in any other case.

Sd/-
V.K.Shrivastava
Judge

Sd/-
L.C. Bhadoo
Judge

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22/2/06